

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM FRIMPONG,

Plaintiff,

-against-

1199SEIU, UNITED HEALTHCARE
WORKERS EAST

Defendants.
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Case No. 07 CV 7375 (JGK)

ECF CASE

AFFIDAVIT OF SUZANNE METZGER

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

SUZANNE METZGER, Associate Counsel for the 1199SEIU/League Job Security Fund (“JSF”) and the League/1199SEIU Training and Upgrading Fund (“TUF”) (collectively “the Funds”) being duly sworn, deposes and affirms that the following statements are true, and those made upon information and belief she believes to be true, under penalties of perjury:

1. I am the Associate Counsel for the Funds and make this affidavit in support of Defendant’s motion to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) and/or for summary judgment pursuant to Fed. R. Civ. P. 56.
2. The Defendant, 1199SEIU United Healthcare Workers East (the “Union”) and the Funds are separate legal entities. The Funds maintain principal places of business at 330 W. 42nd Street, New York, New York, 10036, whereas the Union’s principle place of business is at 310 W. 43rd Street, New York, New York 10036.

3. The Funds are multi-employer trust funds established in accordance with Section 186(c) of the Labor Management Relations Act of 1947, an “employee welfare benefit plan” as that term is defined in ERISA and a Voluntary Employee Beneficiary Association, as that term is defined in Section 501(c)(9) of the Internal Revenue Code.

4. As multi-employer trusts, the Funds are entirely financed with contributions from contributing employers pursuant to various collective bargaining agreements with the Union and the employers, or their bargaining agents, such as the League of Voluntary Hospitals and Homes of New York.

5. The Funds are administered by separate Boards of Trustees consisting of representatives of both labor and management for the purpose of providing training benefits to covered employees and job security benefits to covered employees, both in accordance with written summary plan descriptions (“SPDs”). The SPD for the JSF is attached hereto as Exhibit A and the SPD for the TUF is attached hereto as Exhibit B.

6. The policies of the Funds are set forth, pursuant to ERISA’s notice and disclosure requirements, in laymen’s terms in the SPDs, copies of which are available to the public at the Funds’ offices.

7. The TUF is a trust that is a self-funded employee welfare plan governed by ERISA that provides eligible participants training and job upgrading benefits.

8. The primary mission of TUF is to provide education and training benefits to covered employees. Since its founding in 1969, thousands of health care workers have graduated from TUF sponsored programs moving from service and clerical positions into higher paying professional and technical jobs.

9. TUF also collaborates with education and training organizations to develop innovative education programs that address health care industry shortages as well as meet members' needs as working adults.

10. According to TUF's records, Plaintiff never applied to participate in any TUF programs or to receive any TUF benefits.

11. The JSF is a trust that is a self-funded employee welfare plan governed by ERISA that provides eligible participants assistance when they are laid off from employment.

12. The 1199SEIU/Health & Human Services Employment Center ("Employment Center") is a division of 1199SEIU Labor Management Initiatives, Inc. ("LMI").

13. LMI is a not-for-profit corporation established as a tax-exempt entity under Section 501(c)(5) of the Internal Revenue Code and maintained under the laws of the State of New York, the members of which include the Union and certain healthcare employers.

14. Among other things, LMI was established to operate a "Joint Employment Placement Service," a/k/a the Employment Center, to engage in the following activities:

- a. Monitoring vacancies and providing job placement and referral services (without a fee) to individuals seeking employment opportunities in the health care industry;
- b. Assisting employers by referring qualified applicants for vacancies and recruiting and testing applicants for jobs in the health care industry;
- c. Maintaining a computerized bank of prospective employees from all sources; and
- d. Maintaining a validation process by which employees' prior work performance, licensure and certification may be verified.

15. As a general practice, the Employment Center selects the most qualified applicants from submitted resumes, in proportion to the number of available vacancies, screens applicants via telephone, and then conducts applicant interviews as a condition precedent to a job referral.

16. According to the Funds' records, Plaintiff never applied for assistance from either the JSF or the Employment Center.

17. The trustees of the Funds determine eligibility for benefits. The Union does not make determinations of eligibility for benefits provided by the Funds.

18. According to the Funds' records, Plaintiff has not appealed any denial of benefits by either of the Funds, as set forth in the appeals procedures in the Funds' SPDs.

19. According to pages 21 and 25 of the JSF SPD, and pages 86 and 90 of the TUF SPD, if a member objects to a denial of a benefit, he or she is required to file an appeal with the Funds' Trustees within ninety (90) days of the denial, and furthermore, to exhaust the administrative appeals process as outlined in the SPD before contesting the matter in court.

DATED: October 12, 2007
New York, New York



SUZANNE A. METZGER

Sworn to before me this
12 day of October, 2007



NOTARY PUBLIC

YVETTE CORDERO
Notary Public, State of New York
No. 01CO6140788
Qualified in Queens County
Commission Expires February 13, 20 10